XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

(38)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 316 OF 2001

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANTS :

1. Romenath, S/o. Samedas Satnami Aged 44 years
2. Ramkumar S/o. Samedas Satnami, Aged 26 years
3. Lakhan Lal S/o. Romenath Satnami Aged 18 years
4. Bharat, S/o. Romenath Satnami, Aged about 23 years
5. Shatrughan S/o. Romenath Satnami Aged about 25 years

All R/o Village Gaitara, P.S. Palari, District Raipur (C.G.)

Versus

RESPONDENT : State of Chhattisgarh

Present

Mr. Yashwant Tiwari, Advocate with Shri Alok Pandey, counsel for the accused/appellants.

Mr. U.N.S.Deo, Additional Public Prosecutor for the State/respondent.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL JUDGMENT
(25th June 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 20th March 2001 passed by learned Second Additional Sessions Judge, Baloda Bazar, Distt. Raipur in S.T.No.242/2000 whereby learned Sessions Judge after holding the accused/appellants guilty for commission of the offence under Sections 148,302/149 of the IPC, for committing the murder of one Prem Das @ Fagua, sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs.1,000/- and two years RI and to pay a fine of Rs. 300/- respectively, in default of payment of fine to further undergo R.I. for one year and one month RI.

2. Case of the prosecution, in brief, is that P.W.-6 Ramayan father of deceased Prem Das @ Fagua lodged a report Ex. P-15 in police Outpost Giroudpuri, P.S. Palari to the effect that on 08.04.2000 his son Prem Das left the house at about 5.30 a.m. for Pankhati pond along with the buffaloes. At about 6.00 a.m. son of Dukalu Das Satnami came and informed him that his son Prem Das has been attacked in the field of Mangal Bai by Romenath, Ram Kumar and others and asked him (Ramayan) to go. On

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

hearing this, he along with Ganeshu Satnami left for the place of occurrence and saw that body of his son was lying in the agricultural field of Mangal Bai. There was a cut injury on the neck and lot of blood came out of the injury. His son has been attacked by Romenath, Ram Kumar, Bharat, Lakhan and Shatrughan who are residents of village Gaitra, with *Tabbal* & *Farsa* and committed his murder. After seeing the dead body, he informed the villagers along with *Upsarpanch*. After receiving this report, the S.H.O. of Police Station Palari registered the offence under Section 147,148,302/149 of the IPC against the accused persons. The Investigation Officer, Out Post Giroudpuri left for the place of occurrence. After giving notice of Ex.P-5 site plan of Ex.P-6 was prepared by Halka Patwari. Plain soil and bloodstained soil, one bamboo *lathi* and one steel tumbler of deceased Prem Das was taken into possession from the place of occurrence under Ex.P/7. Accused/Appellant namely Romenath while in police custody, gave memorandum of Ex.P-8 regarding *Farsa* and in pursuance of that, same was seized under Ex.P-10. Accused/appellant namely Ram Kumar gave memorandum of Ex.P-9 and in pursuance of that one Bamboo *lathi* was seized under Ex.P-11. Clothes of accused Romenath were seized under Ex.P-12. Clothes of Ram Kumar were seized under Ex.P-13. Merg intimation of Ex.P-14 was given by Ramayan-father of the deceased. Body of deceased Prem Das was sent for post mortem examination under Ex.P-22 to Primary Health

आदेश पत्रक (पूर्वानुबद्ध)

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Centre, Baloda Bazar where Dr. R.S.Tiwari (P.W.-7) conducted the post mortem on the body of Prem Das and opined that the cause of death was shock because of excessive hemorrhage and cervical injury. The same was caused by hard and sharp object. After completion of investigation, charge sheet was filed against the accused/appellants in the Court of Additional Chief Judicial Magistrate, Baloda Bazar who in turn committed the case to the Sessions Judge, Raipur from where the learned Second Additional Sessions Judge, Baloda Bazar received the case on transfer for trial.

3. The prosecution in order to establish the charges against the accused persons examined 12 witnesses. Statement of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and pleaded innocence.

4. After hearing counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused persons as aforesaid.

5. We have heard Mr. Yashwant Tiwari along with Mr. Alok Pandey on behalf of the appellants and Shri U.N.S.Deo on behalf of the State.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

6 Having heard counsel for the parties, we have perused the record. In order to connect the accused persons with the crime in question, the prosecution has examined P.W.-6 Ramayan-father of the deceased as eye witness, P.W.-8 Kumar, Son of Dukalu Das who is said to have informed Ramayan about the attack being made by the accused persons and P.W.-3 Ganeshu who had been examined and has said to have accompanied Ramayan.

7. P.W.-8 Kumar, who informed Ramayan about the attack, when he was examined, has stated that he has no knowledge about the incident as he has not seen how Prem Das died and who attacked him. He has turned hostile and has not supported the prosecution case. P.W.-3 Ganeshu has stated that he knew deceased Prem Das. The accused persons are residents of his village and that he saw dead body of Prem Das in the field of Mirchu near the pond. When he heard the commotion in the village, he left for the village along with Ramayan-father of the deceased and saw the dead body. Blood was oozing out of the injury on the shoulder. Ramayan-father of the deceased raised cries. He has further stated that father and brother of the accused were murdered by Prem Das therefore there was animosity between the parties.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

8. P.W.-6 Ramayan has stated that Prem Das had been murdered. Romenath, Ram Kumar, Shatrughan, Bharat and Lakhan Satnami who are residents of village Gaitra had committed the murder of Prem Das with *Tabbal & Lathi*. He raised cries in the vicinity whereupon the Sarpanch, Panch and residents of the vicinity came to see the body of his son. There was a cut injury on the shoulder of Prem Das. He was going to the pond at about 6-7.00 a.m., at that time he heard the cries of Prem Das– 'save,save'. He took the buffaloes for grazing in the field. He saw that these persons were running away after attacking his son. There is an improvement in the Court evidence of this witness. In the Court evidence this person has deposed as if he was eye witness of the incident where as in the merg intimation and First Information Report lodged by him, it has been mentioned that in fact he was informed by P.W.-8 Kumar that his son is being attacked and when he reached on the spot he saw him in injured condition, in the First Information Report he has not stated anything that he saw the accused persons standing at the place of occurrence. The evidence of this witness is wholly unreliable and does not inspire confidence and there is no other evidence in order to connect the accused persons with the crime in question. Even though one axe is said to have been recorded at the instance of Romenath and one lathi at the instance of accused Ram Kumar but there is no FSL report showing that the same were stained with human blood and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that too, the blood group of deceased Prem Das. In the First Information Report, it has been mentioned that the accused persons attacked Prem Das with *Tabbal and Farsa* whereas axe has been recovered at the instance of accused Romenath. There is no other evidence in order to connect the accused persons with the crime in question. Therefore we are of the considered opinion that the finding of the trial Court convicting the accused/appellants for commission of the offence under Section 148, 302/149 of the IPC cannot be sustained as the same is not based on any legal admissible evidence. The judgment of the trial Court is passed on the surmises and conjectures.

9. In the result, the appeal succeeds. The conviction and sentence imposed upon the accused/appellants for commission of offence under Section 148, 302/149 of the IPC are set aside and they are acquitted of the said charges. The accused/appellants namely Romenath, Ram Kumar and Lakhan Lal are in detention for more than seven years where as accused/appellants namely Bharat & Shatrughan are in detention for more than six years. Therefore they are directed to be set forth at liberty if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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